



Federal Communications Commission  
Washington, D.C. 20554

DA 05-2688

October 13, 2005

Audrey P. Rasmussen, Esq.  
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**Re:** Request for Waiver of 47 C.F.R. § 1.2107(c)  
Paging Systems, Inc., File No. 0002232564

Dear Ms. Rasmussen:

This letter responds to your letter of July 7, 2005,<sup>1</sup> which seeks a waiver of Section 1.2107(c) of the Commission's rules<sup>2</sup> to permit the late filing of the long-form application for authorization (FCC Form 601) by Auction No. 59 winning bidder Paging Systems, Inc. (PSI).<sup>3</sup> For the reasons stated below, we grant the requested waiver.

*Background.* Section 1.2107(c) and the *Auction No. 59 Closing PN*<sup>4</sup> required PSI to file its long-form application no later than June 9, 2005. However, PSI did not file its long-form application until July 8, 2005, nearly a month following the deadline. Your letter explains that, upon reviewing the *Accepted for Filing Public Notice*,<sup>5</sup> PSI discovered that an administrative error by counsel had resulted in the failure to timely file the company's long-form application.<sup>6</sup>

In support of your request, you state that the public interest will be served by the grant of the requested waiver and that the circumstances indicate that failure to grant would be unduly burdensome and would frustrate the purpose of the rules.<sup>7</sup> You add that the fact that PSI has timely made all payments demonstrates that PSI is a serious bidder and has been acting in good faith in all respects, has always been timely in response to the Commission's auction requirements, with this one exception, and has a

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<sup>1</sup> Letter from Audrey P. Rasmussen, counsel to Paging Systems, Inc., to Catherine W. Seidel, Acting Chief, Wireless Telecommunications Bureau, FCC (July 7, 2005) (*Rasmussen Letter*).

<sup>2</sup> 47 C.F.R. § 1.2107(c).

<sup>3</sup> PSI is the winning bidder on sixteen licenses in markets BEA162 and BEA165. See Multiple Address Systems Spectrum Auction Closes: Winning Bidders Announced, *Public Notice*, DA 05-1392 (WTB rel. May 25, 2005) (*Auction No. 59 Closing PN*).

<sup>4</sup> *Id.* at 1.

<sup>5</sup> Wireless Telecommunications Bureau Announces that Applications for Multiple Address Systems Licenses Are Accepted for Filing: Pleading Cycle Established, *Public Notice*, DA 05-1959 (WTB rel. July 6, 2005).

<sup>6</sup> See *Rasmussen Letter* at 1.

<sup>7</sup> See *id.*

consistent record of FCC compliance.<sup>8</sup> Finally, you state that PSI intends to put the MAS licenses to use in the provision of valuable services to its existing subscribers, which will provide significant public benefit.<sup>9</sup>

*Discussion.* Ordinarily, a winning bidder that fails to file the required long-form application in a timely manner is deemed to have defaulted and is subject to the default payment set forth in Section 1.2104(g).<sup>10</sup> However, the Commission may, for good cause, determine that a late-filed long form application should be accepted.<sup>11</sup> To obtain a waiver of the Commission's rules, PSI must show that: (i) the underlying purpose of the rule would not be served or would be frustrated by its application to the instant case, and grant of the waiver would be in the public interest; or (ii) in view of the unique or unusual factual circumstances of the specific situation, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the entity requesting the waiver has no reasonable alternative.<sup>12</sup> An underlying purpose of post-auction application deadlines is to ensure that winning bidders satisfy the Commission's qualification and eligibility requirements in a timely manner and so avoid "delays in the deployment of new services to the public that would result from litigation, disqualification, and re-auction."<sup>13</sup> As set forth below, PSI has presented sufficient facts to show that, considered in their totality, the circumstances in the instant case meet the standard for waiver of the subject rule.

We find that granting a waiver of the long-form application deadline in this case would not disserve or frustrate the underlying purpose of the post-auction filing requirements. As an initial matter, notwithstanding PSI's failure to timely submit its long-form application, we note that Commission records indicate that the company complied with all pre-auction filing requirements in Auction No. 59, including timely submission of its upfront payment, and was found to be a qualified bidder.<sup>14</sup> Further, following the auction, Commission records show that PSI timely satisfied both its down payment and final payment obligations. As PSI timely met its down payment requirements and submitted its long-form application soon after the filing deadline, we are satisfied that PSI's error will not unduly delay deployment of its service to the public, and thus not undermine or frustrate the purpose of the post-auction licensing process.

We further find that grant of the waiver would serve the public interest. First, dismissal of the long-form application filed by PSI would prevent the company from expanding service to its existing

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<sup>8</sup> See *id.* at 1-2.

<sup>9</sup> See *id.* at 2.

<sup>10</sup> 47 C.F.R. §§ 1.2104(g), 1.2107(c). See Implementation of Section 309(j) of the Communications Act, Competitive Bidding, *Second Report and Order*, 9 FCC Rcd 2348, 2388 ¶ 199 n.152 (1994) (*Competitive Bidding Second R&O*).

<sup>11</sup> See 47 C.F.R. § 1.2107(c); *Auction No. 59 Closing PN* at 6.

<sup>12</sup> See 47 C.F.R. § 1.925(b)(3). See also 47 C.F.R. § 1.3.

<sup>13</sup> See *Competitive Bidding Second R&O*, 9 FCC Rcd at 2382 ¶ 197.

<sup>14</sup> We separately note PSI's representation that, while the company currently holds numerous FCC licenses, and has participated in Auction Nos. 26, 40, 41, 42, 48, 57 and 59, this is PSI's first instance of non-compliance with a Commission auction requirement. See *Rasmussen Letter* at 2.

customers in Fresno (BEA162) and Redding (BEA165), California.<sup>15</sup> We also give considerable weight to PSI's record of prior compliance with auction-related requirements. Finally, we note that our decision comports with precedent granting relief for minor delinquencies that did not disrupt the auction process or the deployment of service.<sup>16</sup>

Although we grant PSI a waiver of the rules that otherwise would require dismissal of its long-form application and associated imposition of a default payment, we strongly caution PSI to take steps to ensure timely compliance with all of the Commission's auction procedures in the future. PSI was on notice that it was responsible for timely submitting its long-form application.

For the reasons set forth above, we grant PSI's waiver request. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331.

Sincerely,

Jeffrey S. Cohen, Deputy Chief  
Public Safety and Critical Infrastructure Division  
Wireless Telecommunications Bureau

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<sup>15</sup> PSI intends to use these licenses to provide "valuable services to its existing subscribers that will provide significant public benefit." *Rasmussen Letter* at 2.

<sup>16</sup> See, e.g., *Silver Palm Communications, Inc., Order*, 17 FCC Rcd 6606 (WTB, Com. Wir. Div. 2002) (Bureau granted waiver when late filing was due to applicant's inadvertence and unawareness of deadline, and licenses would provide rural areas with competitive wireless service); *City Page & Cellular Services, Inc., et al., Order*, 17 FCC Rcd 26109 (WTB, Com. Wir. Div. 2002) (Bureau granted waivers to seven applicants, citing, for instance, one applicant's unawareness of the deadline and another applicant's misunderstanding regarding the scope of counsel's undertaking).